

# WETLANDS COUNCIL

## MINUTES

May 9, 2017

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The Wetlands Council met on Tuesday, May 9, 2017 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Sheridan Brown, Jim Gove, Carol Henderson, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack, Robert Snelling and Bob Wolff

**Absentees:** Councilors: James Kennedy and Seth Prescott

Also present was: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:00 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- *Councilor Lievens made a motion to approve the April 11, 2017 meeting minutes with correction, second by Councilor Wolff. Motion passed unanimously.*

### 2. Public Input: None

### 3. Status of Appeals

Paula Scott, Appeals Clerk

## I. New Appeals

### Docket No. 17-05 WtC – Mark T. Moore Appeal

Subject: 2/21/17 Denial of Wetlands Permit file #2016-01141

Hearing Officer: Not assigned

Status: March 23, 2017 received Petition for Appeal. 3/27/17 received corrected Certification of Service and issued receipt of Appeal letter. Council to accept or decline Appeal.

- *Councilor St. Pierre made a motion to accept the Appeal, second by Councilor Gove. Motion passed unanimously.*

## II. Decisions that need to be written/finalized and issued.

### Docket No. 17-02 WtC (PNA) - Christopher and Rebecca Crowe Appeal

Subject: 12/21/16 Administrative Order No. 16-033 WD

Hearing Officer: Not assigned

Status: January 19, 2017 received Notice of Appeal. 1/20/17 issued Insufficient Appeal letter. February 17, 2017 received Revised Notice of Appeal. March 3, 2017 issued Receipt of Revised Appeal letter. This Appeal appears to be insufficient – no indication a copy was served on the Department. April 11, 2017 Council declined to accept Appeal. 4/12/17 issued Ruling on Acceptance of Appeal-Dismissed. 4/12/17 received Appearance of Atty. Christopher Aslin. 4/21/17 received motion for Reconsideration of Order Dismissing Appeal.

- *Councilor Snelling made a motion to accept the Appeal under Reconsideration, second by Councilor Wolff. Motion passed unanimously.*

**Docket No. 16-20 WtC – Matthew and Katherine Lowrie, et al. Appeal**

Subject: 9/12/16 approval of Wetlands Restoration Plan for McCarthy Subdivision, LRM file #2015-02245 (EMD3009)

Hearing Officer: Not assigned

Status: October 12, 2016 received Petition for Appeal and Appearance for Sherilyn Young. November 1, 2016 received Motion to Summarily Dismiss Petition. 11/14/16 issued receipt of Appeal letter. 11/14/16 received Objection to Motion to Summarily Dismiss. 11/17/16 received Appearance of Richard Head. 11/23/16 received McCarthys' Reply to Appellants' Objection to Motion to Motion for Summary Dismissal. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 the Council voted to table the appeal for their Attorney's opinion. Chairman Kimball has spoken with Counsel and it needs to be further reviewed so it will be pushed back another month. January 10, 2017 Council voted to table the Appeal until February for their attorney's opinion as memo from AGO not ready. 1/20/17 received Appearance from Atty. Brooks and Memorandum in Support of Motion to Summarily Dismiss Petition for Appeal. 1/26/17 received Appellants' Response to DES' Memorandum in Support of Motion for Summary Dismissal. Council to accept or decline the appeal at the February meeting. February 14, 2017 Council voted to not accept the Appeal. 2/22/17 issued Ruling on Acceptance of Appeal and Motion to Summary Dismissal. March 13, 2017 received Appellants' Motion for Rehearing and to Reconsider Order of February 22, 2017. 3/17/17 received Objection to Appellants' Motion for Rehearing and to Reconsider Order of Feb. 22, 2017. 3/22/17 received McCarthys' Objection to Appellants' Motion for Rehearing and to Reconsider Order of Feb. 22, 2017. April 11, 2017 Council voted to deny Motion for Rehearing. 4/14/17 issued Ruling on Motion for Reconsideration – denied.

**Docket No. 16-17 WtC Robert C. Brown Appeal**

Subject: 8/19/16 permit #2009-01521

Hearing Officer: Not assigned May 2, 2017 requested Hearing Officer be assigned.

Status: September 19, 2016 received Petition for Appeal and Motion to Extend Time. November 21, 2016 issued receipt of Appeal letter. Please note the Council may have to determine whether the Appeal is within the Council's jurisdiction at their December 13, 2016 meeting. It also appears that the Appeal is insufficient. If the Council determines that the Appeal is within its jurisdiction, it may be necessary for the Appeals Clerk to send a notice of insufficient Appeal, as required under Env-WtC 203.03, and any insufficiencies corrected by the petitioner, before the Council decides whether to accept or deny the Appeal. December 13, 2016 Council voted to issue a ruling declining to accept Appeal as untimely filed. 12/12/16 received letter dated December 9, 2016 from Appellant. Council needs to issue ruling declining to accept Appeal. 12/29/16 received letter dated December 28, 2016 from Appellant. Discussion was held to clarify the 30 days according to the statute and interpretation. Councilor St. Pierre is to send the 2013 Supreme Court ruling he found to Chairman Kimball. It was decided to have legal counsel review. He will also send the ruling to Council Clerk to be sent to the total Council. January 10, 2017 Council decided to get opinion from their attorney. February 14, 2017 Council voted to rescind 12/13/16 vote of untimely filed and issue Rulings on Timeliness of Appeal and Motion to Extend Time. 2/15/17 issued Insufficient Appeal letter. March 17, 2017 received Revised Notice of Appeal. 3/21/17 issued receipt of Revised Notice of Appeal. This appeal still appears to be insufficient. Council to accept or decline Appeal at April 11, 2017 meeting. April 12, 2017 issued ruling on Acceptance of Appeal - accept provisionally giving him 10 days to say that there was no transmittal letter and certify that he sent the prior copies and whatever response he has here, to the town of Meredith and Atty. Brooks. 4/12/17 received Appearance of Atty. Allen Brooks. 4/21/17 received Certification all parties served. May 2, 2017 issued Appeal accepted letter.

**III. Hearings or PHCs Pending**

**Docket No. 16-12 WtC – William M Ranney Appeal**

Subject: 6/23/16 Approval of Shoreland Permit #2016-01071

Hearing Officer: David Conley, Esq. appointed by AG on 11/8/16

Status: July 5, 2016 received Request for Appeal. 7/14/16 issued Insufficient Appeal letter. 7/19/16 received Revised Appeal. 7/20/16 issued Receipt of Appeal letter. Council accepted the appeal September 13, 2016. 9/23/16 received Motion to Intervene from Permittee. November 7, 2016 issued Appeal accepted letter. A Motion to Intervene has been filed. November 7, 2016 issued Appeal accepted letter. December 2, 2016 Hearing Officer

granted Motion to Intervene. 12/12/16 issued Notice of Pre-hearing Conference scheduled for January 23, 2017 at 9:30 a.m. 1/23/17 issued Pre-hearing Order scheduling hearing for April 11, 2017 at 9 a.m. 1/30/17 received Authorization of Representation from property owner-Deborah Forte. February 1, 2017 issued Order on Request for Clarification of Pre-hearing Order. 2/22/17 received Motion for Clarification on Pre-hearing Order. 2/24/17 received Appearance of Attorney John Cronin for the Intervenor and Intervenor's Witness and Exhibit List. 2/27/17 received Appellant's Witness and Exhibit List. March 10, 2017 received Motion to Include Deborah Forte as Appellant and Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/10/17 received Motion to Amend Applicant-Intervenor's Witness and Exhibit List and Motion for Clarification of Appellant's Witness and Exhibit List. 3/17/17 received Objection to Appellant's Motion to Extend Deadlines and Hearing Date in Pre-hearing Order. 3/21/17 received Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/22/17 issued Decision and Order on Appellant's Motions to Add Additional Appellant and to Extend Deadlines and Hearing Date. Hearing to be held on May 9, 2017 at 9 a.m. 3/24/17 received Objection to Appellant's Motion to Bar Thomas Gregsak as Intervenor and Strike His Filings. 3/27/17 received Reply to Gregsak 3/24/17 Objection to Appellants' Motion to Bar. 3/28/17 issued letter ruling on Motion to Deny Thomas Gregsak Intervenor Status. April 7, 2017 received Motion for Relief For Orderly Proceedings In Case. 4/10/17 received Intervenor's Updated Witness and Exhibit list. 4/11/17 received Appellants' Potential Witness and Exhibit List. 4/12/17 received Permittees Exception to Appellants' Nine Witnesses not identified. 4/18/17 issued ruling re: Motion for Relief for Orderly Proceedings In Case. 4/18/17 received Appearance from Alec McEachern for Appellants and Motion to Exclude Evidence of Conviction. 4/20/17 issued ruling regarding Permittee's Letter Taking Exception to Appellants' Unidentified Witnesses. 4/24/17 received Objection to Motion to Exclude Evidence of Conviction. May 1, 2017 requested copy of proposed exhibit for Hearing Officer to review before issuing an Order on the Motion. 5/2/17 issued letter ruling granting Appellants' Motion to Exclude Evidence of Conviction. 5/4/17 received Appearance of Atty. Laura Cartier for the Intervenor. 5/8/17 received Appearance of Collis Adams for the Department. Hearing is today at 9 a.m.

Councilor Henderson arrives at 8:11 a.m.

**Docket No. 16-18 WtC – Harold Lyon, Jr., Trustee Appeal**

Subject: 9/1/16 denial of after-the-fact request to replace and reconfigure dock, File #2014-02205

Hearing Officer: David Conley, Esq. appointed by AG on 01/20/17

Status: September 30, 2016 received Notice of Appeal and Appearance for Regina Nadeau. October 24, 2016 issued insufficient Appeal letter. November 16, 2016 received refiled Appearance for Attorney Nadeau and Revised Petition for Appeal. 11/28/16 issued receipt of revised Appeal letter. Council to accept or decline Appeal at their January 10, 2017 meeting. 01/05/17 received cover letter, Appearance of Jason Reimers for abutters and a Petition to Intervene. January 10, 2017 Council accepted the Appeal. 1/13/17 issued Appeal accepted letter. 1/30/17 issued Notice of Pre-Hearing conference scheduled for February 22, 2017 at 11 a.m. February 2, 2017 received Appearance from Atty. Allen Brooks for DES. 2/22/17 received Appearance from William Woodbury for the Appellant and issued Pre-hearing Order with a 2nd PHC scheduled for July 17, 2017 and the hearing for Sept. 12, 2017 at 9 a.m. April 28, 2017 received Motion to Extend Time for Filing Motion for Summary Judgment. May 2, 2017 issued letter ruling granting Motion to Extend Time for Filing Motion for Summary Judgment.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No. 14-12 WtC – Susan and Mark Hilbert Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 28, 2014 received Notice of Appeal. 7/30/14 issued insufficient appeal letter. August 8, 2014 received revised Notice of Appeal. 8/11/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/27/14 issued Prehearing Order staying the appeal pending the outcome of the Superior Court Quiet Title action. June 16, 2016 issued request for a status report of the pending appeal. 6/24/16 received appeal status update; still pursuing appeal.

**Docket No. 14-13 WtC – Ergendino Perrone and Robert Gleason Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued receipt of appeal letter. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/21/14 received Assented-To Motion to Stay Proceedings. 10/22/14 issued letter granting Motion to Stay Proceedings. July 1, 2015 received appellant's Withdrawal of Counsel Philip Braley. 7/6/15 received appellant's withdrawal of counsel Cooley Arroyo. June 16, 2016 issued request for a status report of the pending appeal. 6/24/15 received appeal status update from Ergendino Perrone. July 8, 2016 received appeal status update from Robert Gleason.

**Docket No. 14-14 WtC – Jeffrey Norton et al. Appeal**

Subject: 6/30/14 Administrative Order No. 14-016 WD

Hearing Officer: David Conley, Esq. appointed by AG on 9/12/14

Actions: July 30, 2014 received Notice of Appeal. 7/31/14 issued insufficient appeal letter. August 6, 2014 received revised Notice of Appeal. 8/7/14 issued receipt of Revised Notice of Appeal. Council accepted appeal at the September 9, 2014 meeting. 9/10/14 issued appeal accepted letter. 9/18/14 issued Notice of Prehearing Conference scheduled for October 27, 2014 at 1:00 p.m. 10/13/14 received Appearance from Christopher Aslin for the department. 10/22/14 received Assented-To Motion to Stay. 10/23/14 issued letter granting Motion to Stay. June 16, 2016 issued request for a status report of the pending appeal. 6/28/16 received appeal status update.

**V. Misc.**

**4. New Business**

Lori Sommer gave an update of the ARM Funds.

- 1) Transfer of funds in SE Land Trust. Awardee asked to transfer \$10,000 to the Rawlins Brook Project from the Upper North Branch Project. The committee is unanimous in support of this as well as the Army Corp.
- 2) Last year was the 10<sup>th</sup> year of the Aquatic Resource Mitigation Fund. A publication that has been completed was distributed to each councilor going over the success stories of projects that have been funded.
- 3) There is not a grant round this year to allow the funds to accumulate.
  - ***Councilor Brown made a motion to approve the transfer of ARM funds, second by Councilor Mellor. Motion passed unanimously.***

**5. Old Business**

Revision of the rules and the example checklist /form were discussed. The revision of rules was developed by a committee years ago to work towards consistency. The chairman would like to work on the rules this fall.

Councilor Slack arrives at 8:26 a.m.

Chairman Kimball reviewed what changes he has noted.

**6. Next Meetings –**

June 13, 2017 at 8:30 a.m. with deliberations of the Ranney Hearing at 9 a.m.

**7. Adjournment**

- ***Councilor Brown made a motion to adjourn, second by Councilor Snelling. Motion passed unanimously.***

Meeting adjourned at 8:36 a.m.

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**WETLANDS COUNCIL**

**HEARING MINUTES**

**May 9, 2017**

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The Wetlands Council met for  
Docket No. 16-12 WtC – William M. Ranney Appeal Hearing  
Tuesday, May 9, 2017 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Councilors: Sheridan Brown, Jim Gove, Carol Henderson, James Kennedy, Chairman Chip Kimball, Deborah Lievens, Richard Mellor, Russ St. Pierre, Susan Slack, Robert Snelling and Robert Wolff

**Absentees:** Councilor: Seth Prescott

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:15 a.m.

The Hearing closed at 1:15 p.m.

Deliberations to be held June 13, 2017 at 9 a.m.

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